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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUN 30 2025

Jamie Osuna BD0868
4A-1L #44
CSP-COR
PO BOX 3476
CORCORAN, CA 93212

Non-Party Intervenor/Real
Party in Interest,

v.
Dora Solares,
Plaintiff,

v.
Diaz, et al
Defendants.

FILED

Jun 30, 2025

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FILED
No. 1:20-cv-00323-LHR-BAM

Interlocutory Appeal

DATE

INITIAL

**EMERGENCY MOTION UNDER CIRCUIT
RULE 27-3 FOR INTERLOCUTORY RELIEF
UNDER 28 U.S.C. § 1292(a)(1);
MOTION TO VACATE IMPROPER WAIVER
OF PRIVILEGE, COMPEL RETURN AND
SEQUESTRATION OF CONFIDENTIAL AND
PRIVILEGED MATERIALS, AND ENTER
PROTECTIVE ORDER TO PREVENT
FURTHER DISCLOSURE OF NON-PARTY
JAMIE OSUNA'S RECORDS**

**EMERGENCY - IMMEDIATE ATTENTION
REQUESTED**

TO THE HONORABLE COURT AND ALL PARTIES:

Non-party Jamie Osuna, pro se inmate, respectfully submits this interlocutory appeal, motion for reconsideration, and motion for protective order pursuant **28 U.S.C. § 1292(a)**, **Fed. R. Civ. P. 26(c)**, **Fed. R. Evid. 501**, and California **Evidence Code §§ 1014, 1018**, to prevent the improper waiver of his privileges and improper disclosure of Jamie Osuna's privileged mental health records in this federal § 1983 action.

I. INTRODUCTION

This case arises from a civil rights wrongful death action under 42 U.S.C. § 1983. The Court has authorized, or is contemplating, the disclosure of the confidential mental health and competency records of a non-party California state inmate, Jamie Osuna, who:

- Is not a party to the action;
- Has not waived the psychotherapist-patient privilege;

- 1 • Has explicitly objected to any such disclosure;
- 2 • Is currently facing pending felony charges—including
- 3 potential death penalty exposure—in a California state
- 4 prosecution directly related to the incident at issue in
- 5 this civil matter;
- 6 • Whose mental health condition or history is not alleged or
- 7 placed at issue in the original complaint or any operative
- 8 amended complaint.

9 Furthermore, the presiding judge has noted on the record an
10 unfamiliarity with California law—a significant concern, as
11 California state privilege law governs in federal civil cases
12 where state law provides the rule of decision. (See Fed. R. Evid.
13 501.)

14 The contemplated disclosure raises urgent controlling
15 questions of law, including whether:

- 16 1. The psychotherapist-patient privilege under California
17 Evidence Code §§ 1014 and 1018 may be overcome or waived by
18 a federal court when the patient is a non-party criminal
19 defendant who has objected;
- 20 2. The release of mental health and competency records from an
21 ongoing, capital-eligible state criminal proceeding (19CM-
22 1882; Kings County Superior Court)—without protective
23 procedures or waiver—violates the inmate’s Fifth, Sixth, and
24 Fourteenth Amendment rights, including the rights to:
 - 25 • Due process;
 - 26 • Effective assistance of counsel;
 - 27 • Privacy;
 - 28 • Be free from compelled self-incrimination;

1 3. Whether a federal court may compel disclosure of privileged
2 mental health or competency records from an unrelated,
3 pending criminal prosecution when the non-party's mental
4 condition is not placed in controversy in the civil action,
5 and when the records were generated solely for use in a
6 criminal proceeding—raising serious concerns under
7 California Evidence Code § 1016, Penal Code §§ 1369–1370,
8 and *Jaffee v. Redmond*, 518 U.S. 1 (1996). Disclosure would
9 not only constitute a violation of federal common law
10 (*Jaffee v. Redmond*, 518 U.S. 1 (1996)) and California
11 privilege law, but would also inflict irreparable
12 constitutional harm on the non-party Jamie Osuna (“Jamie”).
13 Specifically, it would:

- 14 • Violate his privacy rights under the California
15 Constitution, Article I, § 1, and under established federal
16 precedent;
- 17 • Endanger his due process protections under the Fourteenth
18 Amendment by disclosing pretrial psychiatric materials
19 outside the bounds of criminal procedure;
- 20 • Interfere with his right to remain silent under the Fifth
21 Amendment, particularly where competency evaluations could
22 be misused against him in both state and civil proceedings;
- 23 • Undermine the integrity of mental health treatment within
24 the California Department of Corrections and Rehabilitation
25 (CDCR), where inmates rely on assurances of confidentiality
26 to seek care.

27 The Eastern District’s proposed or actual release of sealed
28 mental health and competency records—generated solely for the

1 purpose of state prosecution and never introduced or relied upon
2 in this civil litigation—creates a dangerous precedent, one that
3 undermines both the rule of law and constitutional safeguards in
4 overlapping criminal and civil proceedings.

5 Plaintiff's counsel, Erin Darling ("Darling"), has failed at
6 every opportunity to notify the third party, Jamie Osuna, or his
7 counsel, regarding any request for or release of Jamie's
8 privileged mental health records. Darling has repeatedly sought
9 production of all of Jamie's mental health and competency
10 records, despite the fact that neither the original nor any
11 amended complaints in *Solares v. Diaz* cites Jamie's mental health
12 as a cause or factor underlying the events in question.

13 When directed by the District Court to pursue relief through
14 the state criminal court—the proper venue for determining access
15 to competency materials in Jamie's pending capital case (19CM-
16 1882)—Darling filed a motion but failed to arrange Jamie's
17 transport, rendering the hearing defective. When the state
18 criminal court judge rescheduled the hearing due to Jamie's
19 absence, Darling stated on the record that he "didn't have time
20 to wait."

21 Subsequently, at the next hearing in *Solares v. Diaz*, Judge
22 Rosenthal waived Jamie Osuna's psychotherapist-patient privilege
23 in full and ordered the release of all mental health and
24 competency records, despite Jamie having previously filed an
25 objection to any such waiver. This objection was sealed by the
26 court under Docket No. 117, and critically, the court:

- 27 • Did not notify the parties in the civil action, including
28 the California Attorney General or Plaintiff;

- Did not notify CDCR, the custodian of the records;
- Did not release the sealed objection (ECF 117) until June 25, 2025—one day after Judge Rosenthal formally waived Jamie's privilege and ordered CDCR to produce the documents on June 24, 2025.

This series of actions deprived the third party of fair notice and a meaningful opportunity to contest the disclosure of his privileged records. It also raises serious due process concerns and violates both California law and the federal psychotherapist-patient privilege recognized in *Jaffee v. Redmond*, 518 U.S. 1 (1996).

II. LEGAL GROUNDS FOR INTERVENTION AND RELIEF

A. Federal Law Recognizes the Psychotherapist-Patient Privilege

In *Jaffee v. Redmond*, 518 U.S. 1 (1996), the U.S. Supreme Court recognized the psychotherapist-patient privilege as a matter of federal common law under Fed. R. Evid. 501. The Court made clear that the privilege extends to psychiatrists, psychologists, and licensed social workers, and is **not subject to a balancing test** once established.

Here, Jamie has clearly invoked this privilege. As a non-party, the records are not essential to the claims or defenses unless extraordinary need is shown—and no such showing has been made. Furthermore, his mental health condition or history is not alleged or placed at issue in the original complaint or any operative amended complaint. *Jaffee* squarely prohibits compelled disclosure of such records where the privilege has not been waived.

1 **B. California Law Also Bars Disclosure**

2 Because this is a diversity action applying California state
3 law to wrongful death claims, California's Evidence Code §§ 1010-
4 1027 govern the scope of privilege.

- 5 • **§1014:** The patient holds the privilege and it **cannot be**
6 **waived by others.**
- 7 • **§1018:** A waiver must be **knowing and voluntary** and must come
8 from the patient or their legal representative.

9 There has been **no waiver** here. Jamie has **objected to**
10 **disclosure.** California law therefore prohibits disclosure.

11 Additionally, **California Constitution, Article I, § 1,**
12 protects individual privacy rights, and courts have consistently
13 held that **mental health records are among the most private and**
14 **protected categories of personal information.** (*See Board of*
15 *Medical Quality Assurance v. Gherardini*, 93 Cal.App.3d 669
16 (1979).)

17 **C. Disclosure Risks Violating Fifth Amendment Rights in**
18 **Ongoing Criminal Case**

19 Jamie is currently facing felony charges in a California
20 criminal proceeding related to the incident forming the basis of
21 the Solares civil suit. Compelled production of confidential
22 mental health records may effectively circumvent his right
23 against self-incrimination or provide inadmissible or prejudicial
24 material to the prosecution.

25 Federal courts have recognized that the risk of **prejudice in**
26 **pending criminal matters** justifies entry of a protective order.
27 (*See Campbell v. Gerrans*, 592 F.2d 1054, 1058 (9th Cir. 1979).)

28 **D. Improper Judicial Application of California Privilege Law**

1 The presiding judge's admission of unfamiliarity with
2 California law underscores the need for restraint and correction.
3 Under Fed. R. Evid. 501, **state privilege law governs civil**
4 **actions where state law supplies the rule of decision.** As this is
5 a wrongful death case governed in part by state law, **the**
6 **psychotherapist-patient privilege under California law must apply**
7 **in full force.**

8 **E. Competency Proceedings Do Not Constitute a Waiver of the**
9 **Psychotherapist-Patient Privilege**

10 Plaintiff argued that Jamie Osuna waived the
11 psychotherapist-patient privilege by undergoing a court-ordered
12 competency hearing in a separate pending criminal matter in
13 around 2021, when March 2019 is the date under scrutiny for
14 *Solares v. Diaz*. This argument is both legally and factually
15 incorrect.

16 First, California courts have long held that merely
17 undergoing a competency evaluation or proceeding does not
18 constitute a waiver of the psychotherapist-patient privilege,
19 especially when the defendant **refuses to engage** in clinical
20 discussions or assessments. In *People v. Gonzalez*, 210 Cal.App.3d
21 1151 (1989), the court emphasized that privilege is not waived
22 simply because mental health was at issue in a legal proceeding;
23 affirmative use of privileged content is required to constitute a
24 waiver.

25 Here, Jamie Osuna **refused to speak with court-appointed**
26 **psychiatrists**, did not affirmatively introduce any privileged
27 material, and has never consented to disclosure of any such
28 records. Moreover, **California Evidence Code § 1016**, which governs

1 waiver in legal proceedings, requires that the patient "tender"
2 their mental condition "as an element of a claim or defense" for
3 privilege to be waived. Jamie Osuna did no such thing.

4 Second, the competency hearing occurred **after the date of**
5 **the incident underlying the wrongful death claim in Solares v.**
6 **Diaz**. Any argument that these later proceedings retroactively
7 justify disclosure is untenable. **Courts routinely prohibit**
8 **fishing expeditions** into post-incident mental health records
9 unless **directly relevant** to an affirmative defense, and subject
10 to privilege analysis. (See *People v. Hammon*, 15 Cal.4th 1117
11 (1997).)

12 Finally, to the extent the Plaintiff argued that the
13 competency hearing justifies disclosure under *Fed. R. Evid. 504*,
14 or under any kind of public policy exception, this is precluded
15 by the Supreme Court's reasoning in *Jaffee v. Redmond*, 518 U.S. 1
16 (1996), where the Court **explicitly rejected** balancing tests that
17 would erode the clarity and strength of the psychotherapist-
18 patient privilege. The *Jaffee* Court cautioned that creating
19 ambiguity or exceptions would chill mental health treatment and
20 impair justice.

21 **F. Attempt to Secure Waiver in Absentia Violated Due Process**
22 **and Undermines Any Claim of Voluntary Disclosure Improper**
23 **Disclosure Following Procedural Default by Plaintiff's Counsel**

24 Darling's failure to comply with the Court's own directive—
25 to pursue the records through the criminal court—should have led
26 to denial of any discovery relief, not judicial circumvention. By
27 skipping the required criminal court process, Darling:

- 28 • Attempted to collaterally attack the jurisdiction and

1 authority of the state criminal court, in violation of the
2 principles of federalism and comity;

- 3 • Ignored Penal Code §§ 1369-1370, which establish exclusive
4 procedures for competency proceedings and restrict
5 disclosure;
- 6 • Failed to secure Osuna's transport under Penal Code § 2625,
7 depriving the criminal court of jurisdiction to act on his
8 case;
- 9 • Misrepresented procedural necessity to the court, then used
10 that misrepresentation to prompt judicial waiver.

11 This conduct constitutes bad faith litigation tactics under
12 Rule 37(a)(5)(B), and **any records obtained through such**
13 **misconduct must be excluded under the exclusionary doctrine** for
14 tainted evidence in civil discovery. See *United States v.*
15 *Morrison*, 449 U.S. 361 (1981).

16 **G. Constitutional Violations Arising from Disclosure**

17 Jamie Osuna is the subject of a pending felony prosecution
18 related to the incident at issue in this civil case. Disclosure
19 of his mental health records—especially those compiled pursuant
20 to court-ordered psychiatric evaluations under Cal. Penal Code §§
21 1368-1370—violates his:

- 22 • **Fifth Amendment right against self-incrimination**, as
23 protected psychiatric content may be used to infer mental
24 state or guilt;
- 25 • **Sixth Amendment right to counsel**, since records were
26 disclosed without notifying defense counsel;
- 27 • **Fourteenth Amendment due process protections**, given lack of
28 notice, opportunity to be heard, and compliance with

required procedural safeguards;

- **California Constitution Article I, § 1**, privacy rights.

See also:

- *Estelle v. Smith*, 451 U.S. 454 (1981) (psychiatric evaluations in criminal cases implicate Fifth and Sixth Amendment rights);
- *Campbell v. Gerrans*, 592 F.2d 1054 (9th Cir. 1979) (protective orders required when disclosure implicates criminal liability);
- *People v. Lopez*, 110 Cal.App.4th 1100 (2003) (privileged competency evaluations inadmissible absent express waiver).

H. Judicial Error and Lack of Jurisdiction to Waive

Privilege

Judge Rosenthal lacked legal authority to waive Jamie Osuna's privilege under California law or federal common law. The Court's reliance on an incomplete procedural record—due to Darling's failure to perfect criminal court process—renders the waiver not only unauthorized but *void ab initio*.

The delayed release of the sealed objection (ECF 117) until after the privilege was waived compounds the constitutional and procedural violation and foreclosed any meaningful opportunity to contest or stay disclosure.

I. Improper Disclosure and Use of Sealed and Privileged C-File and Incident Records from Pending Capital Case Without Notice or Due Process

In connection with ongoing discovery in *Solares v. Diaz*, 1:20-cv-00323-LHR-BAM, the District Court, in coordination with the California Department of Corrections and Rehabilitation

(CDCR) and the California Attorney General, permitted the **release of extensive and highly sensitive documents** from Jamie Osuna's criminal case and institutional files, without notice, consent, or legal justification.

These materials include:

- Sealed incident reports from Mr. Osuna's pending capital case and unrelated matters;
- His entire institutional "C-File", including disciplinary records, staff assault allegations, mental health evaluations, and rule violation reports (RVRs) wholly unrelated to the subject matter of the civil case;
- Confidential psychological assessments conducted while Mr. Osuna was:
 - Declared incompetent to stand trial;
 - Held in custodial conditions involving forced antipsychotic medication;
- Recorded interrogation interviews, taken by correctional staff during this period, which were **coerced under threat** and are now being introduced into a civil wrongful death case;
- A **detailed list of potential additional records** that plaintiff's counsel may seek from Mr. Osuna's files – effectively providing a roadmap for further intrusion into confidential material.

None of these records were part of the original or amended complaint in this §1983 action, and none were disclosed with:

- Prior notice to Mr. Osuna;
- Opportunity to object;
- Opportunity to move for protective relief or redaction;
- Review of sealing or privilege by neutral process.

Legal Grounds for Return, Suppression, and Sealing of Records

This sequence of events implicates multiple serious violations of Mr. Osuna's federal and state rights:

1. Federal Constitutional Violations

- **Due Process Clause (14th Amendment):** Mr. Osuna was deprived of liberty and privacy interests in his medical, psychological, and criminal records **without notice or opportunity to be heard**, in violation of *Mathews v. Eldridge*, 424 U.S. 319 (1976).
- **Right to Privacy:** Disclosure of confidential psychiatric records and coerced statements infringes on Mr. Osuna's **substantive liberty interest in informational privacy**, as recognized in *Whalen v. Roe*, 429 U.S. 589 (1977), and *Doe v. Attorney General of the U.S.*, 941 F.2d 780 (9th Cir. 1991).

2. Federal Evidentiary and Procedural Protections

- **Fed. R. Civ. P. 45(d)(3)(A)(iii):** Compels courts to **quash or modify** subpoenas that seek privileged or protected matter if no waiver or exception applies.
- **Fed. R. Civ. P. 26(c):** Authorizes protective orders to **shield parties or non-parties** from undue burden, oppression, or invasion of privacy.

3. California Law Violations

- 1 • **Cal. Evid. Code §§ 1014, 1018, and 1030:** Protect
2 psychotherapist-patient privilege and prohibit release
3 without a knowing, express waiver.
- 4 • **Cal. Penal Code § 5328(a):** Makes unauthorized disclosure of
5 mental health records by CDCR or state personnel **unlawful**
6 and potentially criminal.
- 7 • **Cal. Penal Code § 987.9 and § 1054.6:** Bar use or public
8 disclosure of capital defense records prior to trial.

9 **4. Involuntary and Coerced Statements**

10 Any statements made by Mr. Osuna while:

- 11 • Deemed **incompetent**;
- 12 • Under **forced psychiatric medication**; and
- 13 • Without legal counsel present,
14 are **presumptively unreliable** and potentially
15 inadmissible under *Miranda v. Arizona*, 384 U.S. 436
16 (1966), and *Colorado v. Connelly*, 479 U.S. 157 (1986).

17 **5. Ethical and Professional Misconduct**

18 The Attorney General's agreement to produce **privileged,**
19 **confidential, and unrelated disciplinary and mental health**
20 **records** without notice to the third party:

- 22 • May constitute a violation of **ethical duties under Rule**
23 **8.4 of the California Rules of Professional Conduct**;
- 24 • Raises significant concerns under **Canon 3(A) (4)** and
25 **3(A) (6)** of the Code of Conduct for United States
26 Judges, regarding fairness, impartiality, and improper
27 influence on pending criminal cases.

J. Improper Conflict of Interest and Denial of Due Process
Where the California Attorney General Represents Civil Defendants
and Simultaneously Facilitates the Disclosure of Privileged
Materials of a Third Party Without Notice or Advocacy

In the federal civil rights action *Solares v. Diaz*, Case No. 1:20-cv-00323-LHR-BAM, the California Attorney General's Office represents multiple California Department of Corrections and Rehabilitation (CDCR) employees as defendants. These same individuals are material witnesses and potential accusers in a pending capital felony homicide case against non-party Jamie Osuna (CDCR No. BD0868) in Kings County Superior Court. By failing to notify or include Jamie Osuna in matters affecting his privileges and protected records, the Court has deprived him of an opportunity to be heard and has improperly placed the burden on the Attorney General—who lacks standing and is conflicted—to assert or waive rights that only Mr. Osuna may lawfully exercise.

Despite this direct and substantial overlap, the District Court and the Attorney General has:

1. **Failed to provide Mr. Osuna with notice** that his psychotherapist-patient, medical, and criminal investigatory records were being sought in the civil litigation;
2. **Failed to notify Mr. Osuna's criminal defense counsel**, despite knowledge of the open capital prosecution;
3. **Declined to assert Mr. Osuna's privileges or object to or grant subpoenas**, resulting in the disclosure of highly protected material including:
 - o Mental health evaluations/records,

- 1 o Records covered by **Penal Code § 5328**,
- 2 o Interrogation recordings under seal in the criminal
- 3 court,
- 4 o HIV testing status and PC §2602 medication lists,
- 5 o Disciplinary records and investigatory outcomes
- 6 directly related to pending felony charges;

7 **4. Stipulated to and/or failed to oppose** Plaintiff's discovery
8 motions that led to these disclosures, while simultaneously
9 defending the correctional officers who will testify against
10 Mr. Osuna in his criminal trial.

11 This sequence of actions represents a **structural and legal**
12 **breakdown in adversarial fairness** and implicates multiple grounds
13 for relief and sanction:

14
15 **i. Due Process Violation - Lack of Notice and Opportunity to Be**
16 **Heard**

17 The U.S. Constitution guarantees that **no person shall be deprived**
18 **of life, liberty, or property without due process of law.**

19 (U.S. Const., Amends. V & XIV). In the context of privileged
20 and confidential information, due process requires that:

- 21
- 22 • The person whose rights are affected **must receive timely**
- 23 **notice;**
- 24 • They must be given a **meaningful opportunity to be heard;**
- 25 • The process must allow for **objection, representation, and**
- 26 **appeal.** (*Mullane v. Central Hanover Bank*, 339 U.S. 306
- 27 (1950)).
- 28

1 Mr. Osuna was **denied all of these procedural rights**. He received
2 **no notice** of the request for his records, **no opportunity to**
3 **oppose** the production, and was **not appointed counsel** despite his
4 status as a mentally incompetent capital defendant.

5
6 **ii. Violation of Psychotherapist-Patient and Privacy Privileges**

7 Mr. Osuna holds:

- 8
- 9 • The **psychotherapist-patient privilege** under **Cal. Evid. Code**
10 **§§ 1014, 1018**, and *Jaffee v. Redmond*, 518 U.S. 1 (1996);
 - 11 • A constitutional **right to privacy** under **Cal. Const., Art. I,**
12 **§1;**
 - 13 • **Medical record protections** under **HIPAA** and the **California**
14 **Confidentiality of Medical Information Act (Civ. Code § 56**
15 **et seq.);**
 - 16 • **Criminal protective rights** over sealed discovery and
17 investigation materials under **Penal Code §§ 987.9, 1054.6,**
18 **and 5328.**
- 19

20 No waiver was granted or implied, and no judicial hearing
21 occurred with Mr. Osuna present. The release of such materials
22 without informed consent, notice, or court finding violates both
23 **state and federal law.**

24 **iii. Conflict of Interest by the Attorney General's Office**

25 The Attorney General's Office cannot ethically or
26 constitutionally:

- 27 • Represent state employees accused of misconduct in a
28 wrongful death action involving Mr. Osuna,

- While also serving as the party responsible for defending and managing records and privileges of Mr. Osuna, a third-party criminal defendant in a capital case.

This dual representation is prohibited under:

- **California Rules of Professional Conduct Rule 1.7(a)(2):** A lawyer has a conflict when the representation of one client is materially limited by responsibilities to another client or third party.
- **People v. Bonin**, 47 Cal.3d 808, 835 (1989): The state may not represent adverse interests in criminal and civil matters arising from the same nucleus of facts.
- **State ex rel. Dept. of Pesticide Regulation v. Pet Food Express**, 144 Cal.App.4th 839 (2006): Conflicted representation by state lawyers undermines the integrity of state prosecutions and civil proceedings.
- **Canon 5 of the California Code of Judicial Ethics**, requiring all attorneys, including state-employed, to maintain impartiality and avoid divided loyalty.

Here, the Attorney General has become **an adverse actor to Mr. Osuna's protected interests** while defending parties whose interests are directly contrary to his. No ethical wall or special counsel has been appointed, and **no notice has been given** to the criminal court overseeing Mr. Osuna's competency and pending capital charges.

iv. Improper Delegation of Advocacy and No Mechanism for Third-Party Protection

In *In re George T.*, 33 Cal.3d 419 (1983), the California

1 Supreme Court emphasized that when mental health, liberty, or
2 competency is at issue, **the affected party must be afforded**
3 **counsel and advocacy.**

4 By allowing Plaintiff's civil attorney to argue for
5 production of sealed competency and trial transcripts – without
6 appointing a guardian ad litem, public defender, or issuing
7 notice to criminal counsel – the federal court and the Attorney
8 General have both **denied Mr. Osuna access to legal advocacy** in a
9 matter directly affecting his rights.

10 **III. REQUESTED RELIEF**

11 Jamie Osuna respectfully requests that this Court:

- 12 1. Stay or reverse any waiver of Jamie Osuna's privileges;
- 13 2. Stay or reverse any order compelling disclosure of the non-
14 party Jamie's mental health records;
- 15 3. Enter a protective order under Fed. R. Civ. P. 26(c) and
16 Cal. Evid. Code §1014 prohibiting disclosure of any mental
17 health or psychiatric records absent express written waiver;
- 18 4. Permit Jamie to intervene for the limited purpose of
19 asserting and protecting this privilege;
- 20 5. Refer any question of California law to an appropriate
21 California-licensed magistrate or consider requesting
22 supplemental briefing from California legal experts;
- 23 6. Seal any previously disclosed documents pending a ruling on
24 this motion.
- 25 7. Order the immediate return or destruction of all improperly
26 disclosed materials from his C-File and criminal case;
- 27 8. Issue a protective order barring future disclosure or
28 discussion of such records in this civil matter;

1 9. Seal any publicly filed transcripts, exhibits, or motions
2 quoting or referencing those materials;

3 10. Declare the waiver of privilege invalid due to lack of
4 notice and incompetency;

5 11. Preserve Mr. Osuna's right to pursue interlocutory appellate
6 review under the collateral order doctrine.

7 12. Order the recusal of District Judge Rosenthal from further
8 proceedings in this matter pursuant to 28 U.S.C. §455(a),
9 due to the appearance of bias and the improper waiver of
10 Jamie Osuna's psychotherapist-patient privilege. The
11 presiding judge's on-record statements reflecting
12 unfamiliarity with governing California law, combined with
13 the unilateral judicial waiver of privilege before the
14 sealed objection (ECF 117) was made available, create an
15 objectively reasonable basis to question impartiality.
16 Continued presiding authority over this matter by Judge
17 Rosenthal would undermine confidence in the fairness and
18 legality of the proceedings.

19 13. The Attorney General's continued participation in both
20 matters constitutes an unwaivable conflict of interest;

21 14. Sanctions or disqualification of conflicted counsel may be
22 appropriate under Fed. R. Civ. P. 37, California State Bar
23 Rules, and judicial ethics authorities;

24 15. All records obtained in violation of due process must be
25 suppressed, returned, and stricken from the civil record;

26 16. The Court must **appoint independent counsel or guardian ad**
27 **litem** to protect Mr. Osuna's interests in any future
28 discovery requests;

17. Further use or dissemination of the improperly obtained materials constitutes **ongoing harm**, prejudicing both civil and criminal proceedings, and should be **enjoined**.

IV. CONCLUSION

Disclosure of Jamie Osuna mental health records would violate settled constitutional, statutory, and evidentiary protections. The records are not central to the claims at issue, and the privilege has not been waived. The Court should act to prevent an irreversible violation of this non-party's rights.

Attached exhibits: *Dckt. 133's* pages of *Solares v. Diaz* showing the judicial quotes above referenced, criminal court docket showing pending hearing; *Dckts. 179 and 181* of *Solares v. Dias* showing improper waiver of Jamie Osuna's privileges and order to and requests for compelling records; 19CM-1882 record; copies of notices of service.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Jamie Osuna".

Dated: June 30, 2025

p.p. Jamie Osuna BD0868

1 been some months. But I would propose Mr. Darling draft
2 me a stout order that is lauded with citations to the
3 authorities that you say authorize this limited release
4 under terms of confidentiality and restriction to
5 attorneys' eyes only. Lard it up.

6 MR. DARLING: Okay.

7 THE COURT: And then make sure that Mr. Duggan has
8 a chance to see it.

9 MR. DARLING: Okay. I will do that.

10 MR. DUGGAN: And, Your Honor, just to the question
11 of -- because you asked whether Mr. Osuna has the
12 capacity to waive or not waive. We asked -- Mr. Osuna
13 has a -- has an attorney in the criminal matter, which is
14 still pending, and he -- so we asked Mr. Osuna's attorney
15 whether he would waive and Mr. Osuna's attorney said no.

16 MR. DARLING: But here's the point on that:
17 Within the criminal context, Your Honor, CDCR has waived.
18 CDCR -- and I've briefed this.

19 CDCR turned over Osuna's mental health records in
20 the criminal case because Osuna's mental health was at
21 issue in that case, and now here CDCR's position is they
22 can't turn it over. And so it's just so inconsistent.

23 THE COURT: So I have a question. I don't know if
24 you do this in California, but in Texas, I routinely get
25 requests to waive privileges or protections that were

1 imposed in one context in a different context. For
2 example grand jury proceedings, moving on what was in the
3 grand jury proceedings. Here, we move from criminal to
4 civil, different context. I don't understand why there
5 would not be an ability to argue and present an order
6 that would say, because this is a different context,
7 because this is a -- because the records would be used in
8 this fashion and subject to these protections, we can
9 overcome what Mr. Duggan has described as a presumption.
10 So we say more than a presumption to begin production for
11 this purpose.

12 MR. DARLING: I can include that in the order I
13 submit, Your Honor.

14 MR. DUGGAN: Your Honor, I really think that would
15 include more briefing to make -- to make that decision
16 that this is a -- that this --

17 THE COURT: Can I ask you a question, Mr. Duggan?

18 MR. DUGGAN: Yes.

19 THE COURT: Is there any other way to get the
20 information?

21 MR. DUGGAN: Is -- the information that's --
22 that's absolutely privileged. It's as the Supreme Court
23 said, this decision in *Jaffee* may result in probative
24 evidence not being available for these cases because it's
25 an absolute -- an absolute psychotherapy patient

P R O C E E D I N G S

(Call to order of the court.)

THE COURT: Good afternoon. Do we have everybody we need?

MR. DARLING: I believe.

THE COURT: All right. Go ahead and state your appearances, please.

MR. DARLING: Good afternoon, Your Honor, Erin Darling on behalf of Plaintiff.

MR. DUGGAN: Good afternoon, Your Honor, Jeremy Duggan on behalf of Defendant Burnes as well as Defendant Pena, Iozza, Munoz, Gamboa, Gallemore, and Garcia.

MR. KUCHINSKY: And good afternoon, Your Honor, David Kuchinsky. I am second counsel to Mr. Duggan representing all the same defendants that he represents.

THE COURT: All right. Thank you.

MS. STOCKER: Good afternoon, Lynn Stocker appearing for Defendant Silva.

THE COURT: All right. Every time I look at this case, my first instinct and my first question is: Why hasn't this case settled? Are you really going to tie this case to a jury, or is it going to be tried before Horror Films International?

MR. DARLING: I mean, I just will say, Your Honor, we have scheduled a private mediation. I know Plaintiff

portal.kings.courts.ca.gov/public-portal/?q=node/394/579737/PV-Events-Portal



19

19CM-1882
The People of the State of California vs. Jaime Osuna
Kings

Summary Filings Parties Documents Events Case Transfer

Events

Events				
Date/Time	Type	Result	Official	Location
19CM-1882: The People of the State of California vs. Jaime Osuna				
06/23/2025 08:15 AM	In Chambers Review - Order on Request for Ancillary Service Funds for Mandatory Capital Defense Training		Gilbert	Chambers Work
06/23/2025 08:15 AM	In Chambers Review - Order on Request for Additional Ancillary Service Funds for a Mitigation Specialist		Gilbert	Chambers Work
08/19/2025 09:00 AM	Prelim Setting		Gilbert	Department 6
08/19/2025 09:00 AM	Status Conference		Gilbert	Department 6
08/19/2025 09:00 AM	Motion Hearing - Appointment of Counsel		Gilbert	Department 6
08/19/2025 09:00 AM	Motion Hearing - Other - to Unseal Competency Proceeding		Gilbert	Department 6
06/11/2025 09:00 AM	Motion Hearing - Other - to Unseal Competency Proceeding	Heard Continued	Gilbert	Department 6
06/11/2025 09:00 AM	Motion Hearing - Appointment of Counsel - (See minute order same date)	Heard Continued	Gilbert	Department 6
05/14/2025 09:00 AM	Prelim Setting	Heard Continued	Gilbert	Department 6
05/14/2025 09:00 AM	Motion Hearing - Strike - Death Penalty	Not Heard Matter Off Calendar	Gilbert	Department 6

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*Attorneys for Non-Party
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

DORA SOLARES,

Plaintiff,

v.

RALPH DIAZ, et al.,

Defendants.

1:20-CV-00323-LHR-BAM

**NON-PARTY CDCR'S OBJECTION TO
PROPOSED ORDER (ECF NO. 177)**

Judge: The Honorable Lee H.
Rosenthal

Trial Date: Not Set
Action Filed: March 2, 2020

INTRODUCTION

Non-Party California Department of Corrections and Rehabilitation (CDCR) provides its objection to Plaintiff's Proposed Order (ECF No. 177). Under the "*Perlman* doctrine," the Proposed Order must be modified to provide a meaningful opportunity to the privilege-holder Osuna to seek review of the Order before disclosure. In particular, the language at the top of page 4, which currently reads "CDCR is ordered to produce [the documents] ... within 48 hours of this order being issued," should be modified to read "CDCR is ordered to produce [the documents] ... within 30 days of this order. Within 2 days of entry of this Order, CDCR shall provide notice of this Order to Osuna."

DISCUSSION

On June 24, 2025, the Court held a pre-motion conference to discuss two subpoenas served on non-parties by Plaintiff Solares. One subpoena was directed to non-party CDCR seeking the mental health records of non-party inmate Jaime Osuna. CDCR timely objected to production of those records based on the psychotherapist-patient privilege held by Osuna under *Jaffee v. Redmond*, 518 U.S. 1 (1996). CDCR filed a privilege log and provided the documents in question to the Court for in camera review.

At the June 24, 2025 conference, the Court found that non-party Osuna had waived privilege by putting his mental state at issue in a competency proceeding for his criminal matter. Osuna was not present or represented at the pre-motion conference, and there is no record that he or his counsel had notice of the conference or that the Court would potentially order disclosure of his records without service of a motion and an opportunity to be heard and make a full record with the participation of his counsel.¹ Having found that privilege was waived, the Court directed CDCR to produce all of the records identified in its privilege log within 48 hours of entry of a written order.

During the June 24, 2025 pre-motion conference, the Court revealed that ECF No. 117, a December 2024 docket entry listed on the docket as a “Sealed Event” was in fact objections filed by the unrepresented and incarcerated non-party Osuna against the release of his privileged mental health records. The parties, and non-party CDCR, were not aware that the sealed filing was from Osuna until the June 24, 2025 hearing, and the Court did not release a copy of the filing until June 25, 2025.

CDCR objects to the portion of the Proposed Order at pages 3-4 requiring CDCR to produce documents “within 48 hours of this order being issued.” Under that language, there is no time for Osuna to respond to, or potentially seek review of, the Order. Instead, the confidential mental health records as to which he has asserted privilege would be disclosed to the parties without notice to Osuna or his criminal defense counsel. In addition to irretrievably breaching the

¹ Osuna’s criminal prosecution for murder and imposition of the death penalty is currently ongoing.

1 psychotherapist-patient privilege, the release of these records could potentially compromise both
2 the prosecution and the defense in Osuna's ongoing criminal case.

3 Instead, the Court should allow adequate time for Osuna to be served with and to respond to
4 the Order before CDCR is required to produce documents. *See* Fed. R. App. P. 4(a)(1)(A) & 4(c)
5 (providing thirty days after entry of an order to file a notice of appeal). Osuna has the right to
6 seek interlocutory appellate review of the Order before his privileged mental health records are
7 disclosed. *See In re Grand Jury Proceedings*, 867 F.2d 562, 563 (9th Cir. 1989), *abrogated on*
8 *other grounds by Jaffee v. Redmond*, 518 U.S. 1 (1996) (insofar as the U.S. Supreme Court later
9 held that the psychotherapist-patient privilege is absolute, not conditional). In *In re Grand Jury*
10 *Proceedings*, the Ninth Circuit held that the "*Perlman* doctrine" allows a mental health patient to
11 file an interlocutory appeal when psychotherapist-patient privileged records are at risk of court-
12 ordered disclosure by a third party because, without an opportunity to seek review, the privilege
13 holder is "powerless to avert the mischief of the order"). *In re Grand Jury Proceedings*, 867 F.2d
14 at 564, *cited with approval in United States v. Doe Co. (In re Grand Jury Investigation)*, 966 F.3d
15 991, 996 (9th Cir. 2020).

16 Osuna was not given notice of the June 24, 2025 pre-motion conference, and he was not
17 present. Because Plaintiff has never filed and served any actual motion concerning disclosure of
18 Osuna's records, Osuna had no notice that the Court might order disclosure at the pre-motion
19 conference and no opportunity to present evidence and make a full record. Thus, he must be
20 served with notice of the Order and provided adequate time to act upon it before disclosure of his
21 confidential mental health records.

22 CONCLUSION

23 The Proposed Order should be modified to allow thirty days before CDCR must produce
24 documents and notice beforehand to the privilege-holder Osuna. In particular, the language at the
25 top of page 4, which currently reads "CDCR is ordered to produce [the documents] ... within 48
26 hours of this order being issued," should be modified to read "CDCR is ordered to produce [the
27 documents] ... within 30 days of this order. Within 2 days of entry of this Order, CDCR shall
28 provide notice of this Order to Osuna."

1 Dated: June 26, 2025

Respectfully submitted,

2 ROB BONTA
3 Attorney General of California
4 JON S. ALLIN
5 Supervising Deputy Attorney General

6 /s/ Jeremy Duggan
7 JEREMY DUGGAN
8 Deputy Attorney General
9 *Attorneys for Non-Party*
10 *California Department of Corrections*
11 *and Rehabilitation*

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CERTIFICATE OF SERVICE

Case Name: **Dora Solares v. Ralph Diaz, et al.**

No. **1:20-CV-00323-LHR**

I hereby certify that on June 27, 2025, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- **NON-PARTY CDCR'S OBJECTION TO PROPOSED ORDER (ECF NO. 177)**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on June 27, 2025, at Los Angeles, California.

J. Sissov

Declarant

/s/ J. Sissov

Signature

SA2019101902

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Attorneys for Plaintiff Dora Solares

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

DORA SOLARES, an individual

Plaintiff,

v.

RALPH DIAZ, in his official capacity,
KENNETH CLARK, in his official
capacity, JOSEPH BURNS, in his
individual and official capacity, and
DOES 1 TO 15,

Defendants.

Case No. 1:20-cv-00323-LHR

**PLAINTIFF'S OPPOSITION TO
CDCR'S OBJECTION TO
PROPOSED ORDER (ECF NO. 177)**

Judge: Hon. Lee H. Rosenthal
Case Filed: March 2, 2020

I. INTRODUCTION

"The lady doth protest too much, methinks." -William Shakespeare, *Hamlet*

Plaintiff Dora Solares hereby opposes California Department of Corrections and Rehabilitation (CDCR) objections to Plaintiff's Proposed Order (ECF No. 177). Plaintiff understands that CDCR and defendants really do not want to produce damning evidence of Jaime Osuna's desire to kill. However, the spaghetti that CDCR throws up against the wall with its objection will not stick. It is a matter of black-letter law that *Perlman* does not apply in the civil context. Furthermore, invoking the psychologist-patient privilege, after it has been waived, does not obviate its waiver.

II. *PERLMAN* IS INAPPLICABLE AND PERMITTING AN INTERLOCUTORY APPEAL WOULD BE WRONG

On June 24, 2025, the Court held a Pre-Motion Conference and ruled that CDCR must respond to Plaintiff's subpoena and produce statements reflecting Jaime Osuna's desire to kill. CDCR now argues, on Osuna's behalf, that Osuna should be served and be given time to respond to the subpoena on CDRC, and that Osuna has a right to seek an interlocutory appeal under *Perlman*. Desperate to avoid a damning production, this Hail Mary attempt falls short for a number of reasons.

First and foremost, it is a matter of black-letter law that *Perlman* does not apply to discovery orders in an ongoing civil case. As the Ninth Circuit has held, "the *Perlman* rule does not apply to render appealable discovery orders issued in an ongoing civil case." *In re National Mort. Equity Corp.*, 857 F.2d 1238, 1240 (9th Cir. 1988). Unlike in the context of a discovery dispute in a civil case, "the classic application" of *Perlman* is where the aggrieved party's motion or petition is the only pending proceeding in any federal court, such as criminal subpoenas or orders to produce documents in grand jury proceedings. *Id.* However, in an ongoing civil case where a party is aggrieved by a district court discovery order, the rationale for *Perlman* does not apply, as the privilege holder can seek recourse through post-judgment appeals. "The essential character of any litigation over a discovery order and the circumstances under which the order is issued... render it merely a step in the civil proceeding." *Id.* Of course, an order compelling discovery is not a final judgment under 28 U.S.C. § 1291.

Second, *Perlman* is an exception that should not be extended in this case, where CDCR participated in the confidential relationship upon which any claim of privilege by Osuna emerges. The Ninth Circuit in *In re Grand Jury Served upon Niren*, 784 F.2d 939 (9th Cir. 1986) (*Niren*) addressed what it called "the *Perlman* exception," to the general rule that appellate jurisdiction does not lie unless the witness has been held in contempt. In *Niren*, the Ninth Circuit expressed two reasons for the limitation of the *Perlman* exception: (1) the exception is intended to protect only those movants who are

1 “powerless” to control the actions of the subpoenaed third party; and (2) it is
2 particularly inappropriate to extend the *Perlman* exception to third parties who are
3 participants in the confidential relationship upon which the movant’s claim of privilege
4 is based. *Id.* at 941. Here, Osuna has already argued for the psychotherapist-patient
5 privilege to apply under *Jaffee*, but that objection was filed after Osuna waived the
6 privilege when he placed his mental health at issue. Additionally, the *Perlman* exception
7 should not be extended to CDCR, which provided the psychological care, maintained
8 Osuna’s mental health records, and fully participated in the confidential relationship
9 upon which any psychotherapist-patient privilege would be based. As stated in *Niren*,
10 “the exception becomes more difficult to sustain where the target of the disclosure
11 order is both subject to the control of the person or entity asserting the privilege and is
12 a participant in the relationship out of which the privilege emerges.” *Id.* at 941 (quoting
13 *National Super Spuds Inc. v. N.Y. Mercantile exchange*, 591 F.2d 174, 179-80 n. 7 (2d Cir.
14 1979)). Here, CDCR is not just the custodian of the sought records, CDCR provided
15 the psychological care and participated in the provider-patient relationship with Osuna
16 of which the privilege emerges. As there is no daylight between CDCR and Osuna on
17 this issue of privilege, so extending the *Perlman* exception is particularly inappropriate.

18 Caselaw makes clear that *Perlman* has been narrowed not expanded. The
19 Supreme Court’s decision in *Mohawk Industries, Inc. v. Carpenter* 558 U.S. 100 (2009) has
20 further narrowed the scope of interlocutory appeals in privilege disputes. See *Holt-*
21 *Orstead v. City of Dickson*, 641 F.3d 230 (6th Cir. 2011) (“The *Mohawk* decision, however,
22 appears to have narrowed the scope of the *Perlman* doctrine”); see also *Jones v. Riot Hosp.*
23 *Grp. LLC*, 2022 U.S. App. LEXIS 3546 (quoting *Admiral Ins. Co., v. U.S. Dist. Ct.*, 881
24 F.2d 1486, 1490 (9th Cir. 1989) (“Discovery orders are not final appealable orders
25 under 28 U.S.C. § 1291, and courts have refused interlocutory review of such orders
26 under the collateral order doctrine.”)). Expanding *Perlman* would fly in the face of the
27 narrowing of interlocutory appeals post-*Mohawk*.

III. WAIVER

Osuna has known about Plaintiff's intentions to obtain statements of his desire to kill within his mental health records and has already asserted the psychologist-patient privilege in an objection filed in December 2024. *See* ECF Docket No. 117. Six months later, CDCR offers further delay, for Osuna to make the same argument under *Jaffee v. Redmond* that he has already made. *Id.* CDCR's latest filing misses the point here. It is not that Osuna has not objected or is not on notice of Plaintiff's intentions to obtain Osuna's homicidal ideation statements within mental health records maintained by CDCR. Rather, the Court has already addressed this on June 24, 2025, took Osuna's objections under consideration, and found that Osuna has already waived the psychologist-patient privilege and ordered production under the strict terms of the Protective Order.

IV. CONCLUSION

Osuna's mental health records have been in dispute for over a year. *See* ECF Docket No. 93 (June 26, 2024) (The plaintiffs will provide a proposed order compelling production of the disputed mental health records.") Plaintiffs obtained an order as to Burnes, and as ordered by the Court then subpoenaed CDCR. Having litigated and lost on the erroneous argument that *Jaffee* creates an absolute, unwaivable privilege, CDCR attempts a *Perlman* Hail Mary pass. As the law is clear, this effort must fall short. CDCR should be ordered to comply with the subpoena and provide the documents it has already provided *in camera* to the Court, within 48 hours.

DATED: June 28, 2025

Respectfully submitted,

/s/ Erin Darling

ERIN DARLING

Attorney for Plaintiff, Dora Solares

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Interim County Counsel
Kings County Counsel
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FILED

MAY 24 2019

MICHELLE S. MARTINEZ, CLERK OF COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KINGS

DEPUTY

AMANDA RONQUILLO

Attorneys for the Kings County District Attorney's Office

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KINGS

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

vs.

JAIME OSUNA,

Defendant. /

Case No.: 19CM1882

KINGS COUNTY DISTRICT ATTORNEY'S
RESPONSE TO ORDER TO SHOW CAUSE
RE: RELEASE AND/OR REDACTION OF
INVESTIGATIVE REPORTS

Hearing: May 31, 2019
Time: 9:00 a.m.
Dept: 5

The Kings County District Attorney's Office ("District Attorney"), provides this response to the Court's Order to Show Cause Regarding Release and/or Redaction of Investigative Reports ("OSC") as filed on May 2, 2019. In support of this response, the District Attorney submits the declaration of Assistant District Attorney Louis D. Torch, who is a prosecuting attorney in this matter.

**I. THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION
INVESTIGATIVE REPORT NO. 19-03-0315 IS A CONFIDENTIAL DOCUMENT**

Under common law, the public has a general right to inspect court case records unless the records are confidential by law or sealed by court order. In accordance, the presumption articulated in California Rules of Court, rule 2.55, subdivision (c), that court records are open for inspection, does not apply to confidential records.

California Department of Corrections and Rehabilitation ("CDCR") Investigative Report No. 19-03-0315 is a record made confidential by California Public Records Act section 6254, subdivision (f). The document is part of an active and ongoing investigation being conducted by the District Attorney and therefore is not open to inspection by the public. (See, Decl. of Louis D. Torch at p. 2.) The document was lodged in the case record as confidential. (See Order to Show Cause at p. 2.) A confidential document does not lose its confidential status by its transfer from one holder to another if its confidentiality is continually protected. In the instant case, all holders have continually protected the confidentiality of the document. Accordingly, CDCR Investigative Report No. 19-03-0315 remains a confidential document which, despite being lodged with the court, is not open to inspection by the public.

II. OVERRIDING INTERESTS SUPPORT SEALING THE RECORD

To the extent this Court determines the records filed and or lodged in this matter are not protected from inspection as confidential documents, overriding interests support sealing the record in accordance with California Rules of Court, rule 2.550, subdivision (d). Rule 2.550, subdivision (d), allows a court to order that a record be filed under seal if facts establish (1) there exists an overriding interest that overcomes the right of public access to the record; (2) the overriding interest supports sealing the record; (3) a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) the proposed sealing is narrowly tailored; and (5) no less restrictive means exist to achieve the overriding interest.

As noted by the County in its Order to Show Cause, the instant case is the subject of much publicity from media outlets that have already sought to publish the case in detail through televised courtroom coverage. (See Order to Show Cause at p. 1.) KGET News, a media outlet, seeks disclosure of the CDCR Investigative Reports which were lodged with the Court as confidential documents and contain detailed information relevant to the case. Any release of the CDCR Investigative Reports will be, presumably, broadly communicated

1 to the public.

2 Such premature, pre-trial release of the CDCR Investigative Reports poses a
3 significant threat to the integrity of the evidence and the Defendant's due process rights
4 given that specific information in the reports would likely taint the potential jury pool in
5 Kings County given the notoriety of this case. (See Decl. of Louis D. Torch at p. 2.) The
6 need to preserve the integrity of evidence and the Defendant's due process rights are
7 significant interests sufficient to override the right of public access to the record and
8 supports sealing the record. If the record is not sealed, there is a substantial probability that
9 the media will publish the detailed information contained in the record, that evidence will be
10 compromised, and that the potential jury pool will be tainted in a manner that compromises
11 Defendant's due process rights. Sealing the record is the least restrictive means to preserve
12 the integrity of the evidence and the Defendant's due process rights. Mere redaction of the
13 record is insufficient to prevent the above referenced harm and achieve the overriding
14 interests.

15 CONCLUSION

16 As explained above, the CDCR Investigative Report lodged with the Court by the
17 District Attorney is a confidential document not subject to inspection. To the extent this
18 Court determines that it is not a confidential document, overriding interests overcome the
19 public's right to access the record. Thus, the District Attorney respectfully requests the
20 Court deny KGET News's request to inspect CDCR's Investigative Report and that it seal
21 the record to protect it from future requests by the public for inspection.

22 Dated: May 24, 2019

Respectfully submitted,

23 DAVID A. PRENTICE
24 Interim County Counsel

25 
26 DIANE WALKER FREEMAN
27 Deputy County Counsel
28

PROOF OF SERVICE
(CCP §§ 1013, 1010.6, 1011, 2015.5 and Rules of Court 2.251 & 2.306)

I am employed by the County of Kings; I am over the age of eighteen years and not a party to the above-entitled action; my business address is: 1400 West Lacey Blvd., Hanford, CA, 93230.

On May 24, 2019, I served the following document(s):

1) KINGS COUNTY DISTRICT ATTORNEY'S RESPONSE TO ORDER TO SHOW CAUSE RE: RELEASE AND/OR REDACTION OF INVESTIGATIVE REPORTS; 2) DECLARATION OF LOUIS D. TORCH ISO RESPONSE TO ORDER TO SHOW CAUSE RE RELEASE AND/OR REDACTION OF INVESTGATIVE REPORTS

☒ BY INTEROFFICE MAIL: by placing a true copy of the document(s) in an interoffice envelope and placing in the designated area for outgoing mail, addressed as set forth below:

Kings County District Attorney's Office
Attn: Louis D. Torch
1400 W. Lacey Blvd., Law Bldg. 4
Hanford, CA 93230

Melina Benninghoff, Esq.
Attorney pickup box at:
Kings County Superior Court
1640 Kings County Drive
Hanford, CA 93230
(Attorney for Defendant)

☒ BY MAIL: by placing a true copy of the document(s) in a sealed envelope and placing in the designated area for outgoing mail, addressed as set forth below:

KGET News
2120 L Street
Bakersfield, CA 93301

I am familiar with this firm's practice whereby the mail, after being placed in a designated area, is given the appropriate postage and is deposited in an appropriate mailbox in the County of Kings, California.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed on May 24, 2019, at Hanford, California.

Michelle Ramirez
MICHELLE RAMIREZ

CERTIFICATE OF SERVICE

Case Name: *Dora Solares v. Ralph Diaz, et al.*

No. 1:20-CV-00323-LHR

I hereby certify that on June 30, 2025, I provided following documents to Erin Darling via U.S. Postal Service Certified Mail to the address on docket record: Law Offices of Erin Darling 3435 Wilshire Blvd, Suite 2910, Los Angeles, CA 90010:

• **PROOF OF SERVICE AND NOTICE OF:** EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 FOR INTERLOCUTORY RELIEF UNDER 28 U.S.C. § 1292(a)(1); MOTION TO VACATE IMPROPER WAIVER OF PRIVILEGE, COMPEL RETURN AND SEQUESTRATION OF CONFIDENTIAL AND PRIVILEGED MATERIALS, AND ENTER PROTECTIVE ORDER TO PREVENT FURTHER DISCLOSURE OF NON-PARTY JAMIE OSUNA'S RECORDS

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on June 30, 2025.

A handwritten signature in black ink, appearing to read "Jamie Osuna". The signature is stylized with large, flowing loops and is written on a white background.

Declarant Signature
p.p. Jamie Osuna BD0868

CERTIFICATE OF SERVICE

Case Name: *Dora Solares v. Ralph Diaz, et al.*

No. 1:20-CV-00323-LHR

I hereby certify that on June 30, 2025, I provided following documents to the Clerk of the Court of the Eastern District via U.S. Postal Service Certified Mail to the address Robert E. Coyle United States Courthouse, Office of the Clerk, 2500 Tulare Street, Room 1501, Fresno, CA 93721:

• **PROOF OF SERVICE AND NOTICE OF:** EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 FOR INTERLOCUTORY RELIEF UNDER 28 U.S.C. § 1292(a)(1); MOTION TO VACATE IMPROPER WAIVER OF PRIVILEGE, COMPEL RETURN AND SEQUESTRATION OF CONFIDENTIAL AND PRIVILEGED MATERIALS, AND ENTER PROTECTIVE ORDER TO PREVENT FURTHER DISCLOSURE OF NON-PARTY JAMIE OSUNA'S RECORDS

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on June 30, 2025.

A handwritten signature in black ink, appearing to read "Jamie Osuna". The signature is stylized with large, flowing loops and is written on a white background.

Declarant Signature
p.p. Jamie Osuna BD0868

CERTIFICATE OF SERVICE

Case Name: *Dora Solares v. Ralph Diaz, et al.*

No. 1:20-CV-00323-LHR

I hereby certify that on June 30, 2025, I provided following documents to Rob Bonta, Attorney general; and Jeremy Duggan, Deputy Attorney General via U.S. Postal Service Certified Mail to the address on docket file 1300 I Street, Suite 125, PO Box 944255, Sacramento, CA 944255, Sacramento, CA 94244-2550:

• **PROOF OF SERVICE AND NOTICE OF:** EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 FOR INTERLOCUTORY RELIEF UNDER 28 U.S.C. § 1292(a)(1); MOTION TO VACATE IMPROPER WAIVER OF PRIVILEGE, COMPEL RETURN AND SEQUESTRATION OF CONFIDENTIAL AND PRIVILEGED MATERIALS, AND ENTER PROTECTIVE ORDER TO PREVENT FURTHER DISCLOSURE OF NON-PARTY JAMIE OSUNA'S RECORDS

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on June 30, 2025.

A handwritten signature in black ink, appearing to read "Jamie Osuna". The signature is stylized with large, flowing loops and is written on a white background.

Declarant Signature

p.p. Jamie Osuna BD0868

CERTIFICATE OF SERVICE

Case Name: *Dora Solares v. Ralph Diaz, et al.*

No. 1:20-CV-00323-LHR

I hereby certify that on June 30, 2025, I provided following documents to Lynne G.

Stocker via U.S. Postal Service Certified Mail to the address on docket record: 1939

Harrison Street, Suite 612, Oakland, California 94612:

• PROOF OF SERVICE AND NOTICE OF: Emergency Motion Under Circuit Rule 27-3

**INTERLOCUTORY APPEAL / MOTION FOR RECONSIDERATION AND MOTION
FOR PROTECTIVE ORDER TO PREVENT UNAUTHORIZED DISCLOSURE OF
PRIVILEGED MENTAL HEALTH RECORDS OF NON-PARTY INMATE JAMIE
OSUNA UNDER 28 U.S.C. § 1292(a)**

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on June 30, 2025.

A handwritten signature in black ink, appearing to read 'JAMIE OSUNA', with a large, stylized initial 'J' and 'O'.

Declarant Signature

p.p. Jamie Osuna BD0868

CERTIFICATE OF SERVICE

Case Name: *Dora Solares v. Ralph Diaz, et al.*

No. 1:20-CV-00323-LHR

I hereby certify that on June 30, 2025, I provided following documents to Lynne G. Stocker via U.S. Postal Service Certified Mail to the address on docket record: 1939 Harrison Street, Suite 612, Oakland, California 94612:

• **PROOF OF SERVICE AND NOTICE OF: Emergency Motion Under Circuit Rule 27-3 INTERLOCUTORY APPEAL / MOTION FOR RECONSIDERATION AND MOTION FOR PROTECTIVE ORDER TO PREVENT UNAUTHORIZED DISCLOSURE OF PRIVILEGED MENTAL HEALTH RECORDS OF NON-PARTY INMATE JAMIE OSUNA UNDER 28 U.S.C. § 1292(a)**

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on June 30, 2025.

A handwritten signature in black ink, appearing to read "Jamie Osuna". The signature is stylized with large, flowing loops and is written on a white background.

Declarant Signature
p.p. Jamie Osuna BD0868